107TH CONGRESS 2D SESSION

S. 1942

To amend the Internal Revenue Code of 1986 to provide a tax credit to promote the production of biodiesel, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 13, 2002

Mrs. Lincoln (for herself, Mr. Dayton, and Mr. Johnson) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide a tax credit to promote the production of biodiesel, and for other purposes.

- 1 Be it enacted by the Senate and House of Representa-
- 2 tives of the United States of America in Congress assembled,
- 3 SECTION 1. SHORT TITLE.
- 4 This Act may be cited as the "Biodiesel Promotion
- 5 Act of 2002".
- 6 SEC. 2. INCENTIVES FOR BIODIESEL.
- 7 (a) Credit for Biodiesel Used as a Fuel.—
- 8 (1) In General.—Subpart D of part IV of
- 9 subchapter A of chapter 1 of the Internal Revenue
- 10 Code of 1986 (relating to business related credits) is

1	amended by inserting after section 40 the following
2	new section:
3	"SEC. 40A. BIODIESEL USED AS FUEL.
4	"(a) General Rule.—For purposes of section 38,
5	the biodiesel fuels credit determined under this section for
6	the taxable year is an amount equal to the biodiesel mix-
7	ture credit.
8	"(b) Definition of Biodiesel Mixture Cred-
9	IT.—For purposes of this section—
10	"(1) Biodiesel mixture credit.—
11	"(A) IN GENERAL.—The biodiesel mixture
12	credit of any taxpayer for any taxable year is
13	the sum of the products of the biodiesel mixture
14	rate for each qualified biodiesel mixture and the
15	number of gallons of such mixture of the tax-
16	payer for the taxable year.
17	"(B) BIODIESEL MIXTURE RATE.—For
18	purposes of subparagraph (A), the biodiesel
19	mixture rate for each qualified biodiesel mixture
20	shall be 1 cent for each whole percentage point
21	(not exceeding 20 percentage points) of bio-
22	diesel in such mixture.
23	"(2) Qualified biodiesel mixture.—

1	"(A) IN GENERAL.—The term 'qualified
2	biodiesel mixture' means a mixture of diesel
3	and biodiesel which—
4	"(i) is sold by the taxpayer producing
5	such mixture to any person for use as a
6	fuel, or
7	"(ii) is used as a fuel by the taxpayer
8	producing such mixture.
9	"(B) Sale or use must be in trade or
10	BUSINESS, ETC.—Biodiesel used in the produc-
11	tion of a qualified biodiesel mixture shall be
12	taken into account—
13	"(i) only if the sale or use described
14	in subparagraph (A) is in a trade or busi-
15	ness of the taxpayer, and
16	"(ii) for the taxable year in which
17	such sale or use occurs.
18	"(C) Casual off-farm production not
19	ELIGIBLE.—No credit shall be allowed under
20	this section with respect to any casual off-farm
21	production of a qualified biodiesel mixture.
22	"(c) Coordination With Exemption From Ex-
23	CISE TAX.—The amount of the credit determined under
24	this section with respect to any biodiesel shall, under regu-
25	lations prescribed by the Secretary, be properly reduced

1	to take into account any benefit provided with respect to
2	such biodiesel solely by reason of the application of section
3	4041(n) or section 4081(f).
4	"(d) Definitions and Special Rules.—For pur-
5	poses of this section—
6	"(1) Biodiesel defined.—
7	"(A) In General.—The term 'biodiesel'
8	means the monoalkyl esters of long chain fatty
9	acids derived from virgin vegetable oils for use
10	in compressional-ignition (diesel) engines. Such
11	term shall include esters derived from vegetable
12	oils from corn, soybeans, sunflower seeds, cot-
13	tonseeds, canola, crambe, rapeseeds, safflowers,
14	flaxseeds, rice bran, and mustard seeds.
15	"(B) REGISTRATION REQUIREMENTS.—
16	Such term shall only include a biodiesel which
17	meets—
18	"(i) the registration requirements for
19	fuels and fuel additives established by the
20	Environmental Protection Agency under
21	section 211 of the Clean Air Act (42
22	U.S.C. 7545), and
23	"(ii) the requirements of the Amer-
24	ican Society of Testing and Materials
25	D6751.

1	"(2) BIODIESEL MIXTURE NOT USED AS A
2	FUEL, ETC.—
3	"(A) Imposition of Tax.—If—
4	"(i) any credit was determined under
5	this section with respect to biodiesel used
6	in the production of any qualified biodiesel
7	mixture, and
8	"(ii) any person—
9	"(I) separates the biodiesel from
10	the mixture, or
11	"(II) without separation, uses the
12	mixture other than as a fuel,
13	then there is hereby imposed on such per-
14	son a tax equal to the product of the bio-
15	diesel mixture rate applicable under sub-
16	section $(b)(1)(B)$ and the number of gal-
17	lons of the mixture.
18	"(B) Applicable Laws.—All provisions of
19	law, including penalties, shall, insofar as appli-
20	cable and not inconsistent with this section,
21	apply in respect of any tax imposed under sub-
22	paragraph (A) as if such tax were imposed by
23	section 4081 and not by this chapter.
24	"(3) Pass-thru in the case of estates and
25	TRUSTS.—Under regulations prescribed by the Sec-

1 retary, rules similar to the rules of subsection (d) of 2 section 52 shall apply. 3 "(e) Election To Have Biodiesel Fuels Credit NOT APPLY.— "(1) IN GENERAL.—A taxpayer may elect to 5 6 have this section not apply for any taxable year. 7 "(2) Time for making election.—An elec-8 tion under paragraph (1) for any taxable year may 9 be made (or revoked) at any time before the expira-10 tion of the 3-year period beginning on the last date 11 prescribed by law for filing the return for such tax-12 able year (determined without regard to extensions). 13 "(3) Manner of making election.—An elec-14 tion under paragraph (1) (or revocation thereof) 15 shall be made in such manner as the Secretary may 16 by regulations prescribe.". 17 "(f) TERMINATION.—This section shall not apply to any fuel sold after December 31, 2012.". 18 19 (2) Credit treated as part of general 20 BUSINESS CREDIT.—Section 38(b) of such Code is amended by striking "plus" at the end of paragraph 21 22 (14), by striking the period at the end of paragraph (15) and inserting ", plus", and by adding at the 23

end the following new paragraph:

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1	"(16) the biodiesel fuels credit determined
2	under section 40A.".
3	(3) Conforming amendments.—
4	(A) Section 39(d) of such Code is amended
5	by adding at the end the following new para-
6	graph:
7	"(11) No carryback of biodiesel fuels
8	CREDIT BEFORE JANUARY 1, 2003.—No portion of
9	the unused business credit for any taxable year
10	which is attributable to the biodiesel fuels credit de-
11	termined under section 40A may be carried back to
12	a taxable year beginning before January 1, 2003.".
13	(B) Section 196(c) of such Code is amend-
14	ed by striking "and" at the end of paragraph
15	(9), by striking the period at the end of para-
16	graph (10), and by adding at the end the fol-
17	lowing new paragraph:
18	"(11) the biodiesel fuels credit determined
19	under section 40A.".
20	(C) Section 6501(m) of such Code is
21	amended by inserting "40A(e)," after "40(f),".
22	(D) The table of sections for subpart D of
23	part IV of subchapter A of chapter 1 of such
24	Code is amended by adding after the item relat-
25	ing to section 40 the following new item:

1	(4) Effective date.—The amendments made
2	by this subsection shall apply to taxable years begin-
3	ning after December 31, 2002.
4	(b) REDUCTION OF MOTOR FUEL EXCISE TAXES ON
5	BIODIESEL MIXTURES.—
6	(1) In general.—Section 4081 of the Internal
7	Revenue Code of 1986 (relating to manufacturers
8	tax on petroleum products) is amended by adding at
9	the end the following new subsection:
10	"(f) Biodiesel Mixtures.—Under regulations pre-
11	scribed by the Secretary—
12	"(1) IN GENERAL.—In the case of the removal
13	or entry of a qualified biodiesel mixture, the rate of
14	tax under subsection (a) shall be the otherwise appli-
15	cable rate reduced by the biodiesel mixture rate (if
16	any) applicable to the mixture.
17	"(2) Tax prior to mixing.—
18	"(A) IN GENERAL.—In the case of the re-
19	moval or entry of diesel fuel for use in pro-
20	ducing at the time of such removal or entry a
21	qualified biodiesel mixture, the rate of tax
22	under subsection (a) shall be the otherwise ap-
23	plicable rate, reduced by the amount deter-
24	mined under subparagraph (B).

1	"(B) APPLICABLE REDUCTION.—For pur-
2	poses of subparagraph (A), the amount deter-
3	mined under this subparagraph is an amount
4	equal to the biodiesel mixture rate for the quali-
5	fied biodiesel mixture to be produced from the
6	diesel fuel, divided by a percentage equal to 100
7	percent minus the percentage of biodiesel which
8	will be in the mixture.
9	"(3) Definitions.—For purposes of this sub-
10	section, any term used in this subsection which is
11	also used in section 40A shall have the meaning
12	given such term by section 40A.
13	"(4) Certain rules to apply.—Rules similar
14	to the rules of paragraphs (6) and (7) of subsection
15	(c) shall apply for purposes of this subsection.".
16	(2) Conforming amendments.—
17	(A) Section 4041 of such Code is amended
18	by adding at the end the following new sub-
19	section:
20	"(n) Biodiesel Mixtures.—Under regulations pre-
21	scribed by the Secretary, in the case of the sale or use
22	of a qualified biodiesel mixture (as defined in section
23	40A(b)(2)), the rates under paragraphs (1) and (2) of
24	subsection (a) shall be the otherwise applicable rates, re-

- 1 duced by any applicable biodiesel mixture rate (as defined
- 2 in section 40A(b)(1)(B).".
- 3 (B) Section 6427 of such Code is amended
- 4 by redesignating subsection (p) as subsection
- 5 (q) and by inserting after subsection (o) the fol-
- 6 lowing new subsection:
- 7 "(p) BIODIESEL MIXTURES.—Except as provided in
- 8 subsection (k), if any diesel fuel on which tax was imposed
- 9 by section 4081 at a rate not determined under section
- 10 4081(f) is used by any person in producing a qualified
- 11 biodiesel mixture (as defined in section 40A(b)(2)) which
- 12 is sold or used in such person's trade or business, the Sec-
- 13 retary shall pay (without interest) to such person an
- 14 amount equal to the per gallon applicable biodiesel mix-
- 15 ture rate (as defined in section 40A(b)(1)(B)) with respect
- 16 to such fuel.".
- 17 (3) Effective date.—The amendments made
- by this subsection shall apply to any fuel sold after
- December 31, 2002, and before January 1, 2013.
- 20 (c) Highway Trust Fund Held Harmless.—
- 21 There are hereby transferred (from time to time) from the
- 22 funds of the Commodity Credit Corporation amounts
- 23 equivalent to the reductions that would occur (but for this
- 24 subsection) in the receipts of the Highway Trust Fund
- 25 by reason of the amendments made by this section. Such

- 1 transfers shall be made on the basis of estimates made
- 2 by the Secretary of the Treasury and adjustments shall
- 3 be made to subsequent transfers to reflect any errors in

4 the estimates.

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